

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**JEFFREY MOORE,**

**Petitioner,**

**v.**

**Civil No. 5:06cv44  
(Judge Stamp)**

**DEPARTMENT OF CORRECTIONS,**

**Respondent.**

**OPINION/REPORT AND RECOMMENDATION**

This case was initiated as a petition for writ of mandamus on petitioners' behalf on April 19, 2006, pursuant to a letter that was forwarded to this Court by the Southern District of West Virginia. At the time this case was initiated, the Clerk sent the *pro se* petitioner a Notice of General Guidelines for Appearing Pro Se in Federal Court and a Deficiency Notice informing petitioner that there is a \$350 filing fee for filing a civil suit in this Court. Petitioner was advised that in order to continue the prosecution of his case, he would be required to either pay the required filing fee or file a motion to proceed as a pauper. The Clerk enclosed blank *in forma pauperis* forms and advised petitioner that he had thirty days to either pay the fee or file the completed forms. Petitioner was also advised that the failure to timely comply with the notice could result in the dismissal of his case.

When, on June 12, 2006, a review of the file showed that petitioner had failed to comply with the Court's deficiency notice, the Court issued a show cause Order in which petitioner was given ten (10) days to show cause why his case should not be dismissed for the failure to prosecute. Because more than ten days have passed since the issuance of that Order, and petitioner has not shown cause for his failure to pay the required filing fee nor has he filed a request to proceed as a pauper, it is the recommendation of the undersigned that this case be **DISMISSED without**

**prejudice** for the failure to prosecute.

Within ten (10) days after being served with a copy of this report and recommendation, any party may file with the Clerk of Court written objections identifying those portions of the recommendation to which objection is made and the basis for such objections. A copy of any objections shall also be submitted to the Honorable Frederick P. Stamp, Jr., United States District Judge. Failure to timely file objections to this recommendation will result in waiver of the right to appeal from a judgment of this Court based upon such recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4<sup>th</sup> Cir.), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4<sup>th</sup> Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).

The Clerk is directed to mail a copy of this Opinion/Report and Recommendation to the *pro se* petitioner and any counsel of record.

Dated: June 29, 2006.

/s John S. Kaull

JOHN S. KAULL

UNITED STATES MAGISTRATE JUDGE